

[ARGUMENT CURRENTLY SCHEDULED FOR FEBRUARY 14, 2024]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF GEORGIA and BRAD RAFFENSPERGER,
Georgia Secretary of State, in his official capacity,

Plaintiffs-Appellees,

v.

No. 23-5083

UNITED STATES DEPARTMENT OF JUSTICE,

Defendant-Appellant.

**CONSENT MOTION TO RESCHEDULE ORAL ARGUMENT
FOR ANOTHER DATE IN FEBRUARY OR MARCH 2024**

Pursuant to Federal Rule of Appellate Procedure 26(b) and D.C. Circuit Rule 34(g), defendant-appellant United States Department of Justice respectfully moves to reschedule oral argument for another date, at the Court's convenience, in late February or March 2024. Plaintiffs-appellees consent to this motion and have indicated dates of availability for a rescheduled argument, as set forth below.

1. Plaintiffs-appellees State of Georgia *et al.* brought suit under the Freedom of Information Act (FOIA) seeking to compel the U.S. Department of Justice to produce certain records, including records reflecting the Department's litigation communications with private co-counsel related to

voting-rights cases currently pending in the Northern District of Georgia. In response, the federal government produced numerous documents, but withheld others under FOIA Exemption 5. As to these withholdings, on cross-motions for summary judgment, the district court ruled in plaintiffs' favor and ordered disclosure of the documents. The Department of Justice then appealed to this Court, and this appeal was fully briefed as of November 20, 2023.

2. On December 20, 2023, this Court issued an order scheduling oral argument in this appeal for Wednesday, February 14, 2024.

3. The Department of Justice respectfully requests that, if possible, oral argument in this appeal be rescheduled for another date in the latter half of February or in March 2024, to accommodate a conflict of counsel.

4. The attorney designated to argue this appeal on behalf of the federal government is Jeffrey E. Sandberg of the U.S. Department of Justice, Civil Division, Appellate Staff. Mr. Sandberg is also lead counsel for the plaintiff-appellee in *United States v. State of Missouri et al.*, No. 23-1457 (8th Cir.), an appeal from an injunction barring enforcement of a state statute on federal constitutional grounds. The Eighth Circuit recently granted expedited hearing in that case and scheduled in-person oral argument for February 12-16, 2023. That court's order states that counsel "will be advised of the date, time and location of the argument when the February calendar is published." The

Eighth Circuit's website, in turn, reflects that the February calendar "will be published approximately thirty days in advance of the scheduled hearing dates," *i.e.*, likely not until January 12, 2024. Mr. Sandberg has consulted with the Eighth Circuit's calendar clerk by telephone, but the clerk was unable to confirm that the argument in *United States v. Missouri* will be scheduled for a date and time that would permit Mr. Sandberg to argue both cases and travel between St. Louis and Washington, D.C.

5. Mr. Sandberg submitted a letter to this Court in September 2023 advising of his availability for oral argument and noting conflict dates in November 2023, December 2024, and January 2024. At the time of this Court's order scheduling oral argument, Mr. Sandberg had not yet filed an updated letter reflecting the additional conflict in February 2024. Counsel regrets his delay in informing this Court of his intervening conflict with the expedited hearing in the Eighth Circuit.

6. Counsel for plaintiffs-appellees have authorized us to state that they consent to this request and have indicated that their best availability is for the following dates: February 26; February 28; March 4; March 5; or March 13.

CONCLUSION

For the foregoing reasons, the Department of Justice respectfully requests that oral argument be rescheduled, at the Court's convenience, for another date in late February or March 2024 as set forth above.

Respectfully submitted,

MARK B. STERN

/s/ Jeffrey E. Sandberg

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*Counsel for Defendant-Appellant
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December 27, 2023

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because it contains 576 words, according to the count of Microsoft Word. The motion complies with Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Calisto MT, a proportionally spaced typeface.

/s/ Jeffrey E. Sandberg
Jeffrey E. Sandberg
Counsel for Defendant-Appellant
United States Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2023, I electronically filed the foregoing motion with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. The participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Jeffrey E. Sandberg
Jeffrey E. Sandberg
Counsel for Defendant-Appellant
United States Department of Justice